

TITLE 14. FISH AND GAME COMMISSION

Notice of Proposed Changes in Regulations

Notice of Proposed Changes in Regulations of the Fish and Game Commission

NOTICE IS HEREBY GIVEN that the Fish and Game Commission, pursuant to the authority vested by sections 200, 202, 205, 220 and 315 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206 and 220 of said Code, proposes to amend sections 1.17, 1.59, 2.09, 2.10, 5.00, 5.50, 5.75, 7.00, 7.50, 8.00, 27.60, 43 and 195, Title 14, California Code of Regulations, regarding Sport Fishing Regulations for 2004-2006.

Informative Digests/Policy Statement Overview

Sections 1.17, 1.59, 27.60 and 195 Party Boat Trip Limits

Under existing regulations, recreational anglers fishing in waters of the Ocean and San Francisco Bay District (described in Section 27.00, Title 14, CCR) (ocean waters) are subject to individual daily bag and possession limits that include a general 20-finish daily bag and possession limit overall and other daily bag and possession limits specific to individual species of finfish [Sections 27.60 and 27.85 through 28.59, Title 14, California Code of Regulations (CCR)]. Also, under existing regulations, some species of fish have no daily bag limit (any number may be taken) [Subsection 27.60(d), Title 14, CCR]. Once a person has caught an authorized daily bag limit of fish, that person is supposed to stop fishing for that species. However, while not presently authorized, it has been common practice for anglers that have already caught a daily bag limit of a finfish aboard a boat to keep fishing to help fill the daily bag limit of other anglers aboard that have not yet caught a limit of fish.

Also, existing regulations require owners and operators of commercial passenger fishing vessels (CPFVs) to record information about each fishing trip, including numbers of anglers, fishing location, and fish caught aboard the CPFVs on logbooks, and provide that information to the Department (Section 195, Title 14, CCR). Existing regulations also specify that fish may not be taken or possessed by CPFV passengers, or the vessel owner or operator in excess of the individual daily limits prescribed in sport fishing regulations.

Proposed regulation changes would authorize what are commonly termed daily "boat bag limits" or simply "boat limits" by allowing anglers aboard vessels to continue to fish after they have taken their individual daily bag and possession limits, until the daily bag limit for all authorized anglers aboard a vessel is filled [Amends Sections 1.17, 1.59, 27.60, and 195, Title 14, California Code of Regulations (CCR)]. Generally, boat limits are calculated as the daily bag limit for a species or species group of fish times the number of anglers authorized to fish on a vessel.

The proposed changes would authorize daily boat limits for anglers aboard any vessel in ocean waters. Under the proposed regulation changes, those anglers who do not wish to continue to catch fish after they have taken their own daily bag limit(s) may choose to either stop fishing at that point, or continue to help catch fish for others who do not have a daily bag limit of fish, including hooking fish and passing the rod and reel to others to fight and land the fish, until the boat limit is achieved. An authorization for anglers to continue to fish until a boat limit is taken does not allow individual anglers to possess more than their individual daily bag limit for any species of finfish. Once a fishing trip is completed and anglers have disembarked from a vessel, an angler may only possess one daily bag limit of a species, unless the vessel is fishing under a Declaration of Multi-Day Fishing Trip filed with the Department pursuant to Section 27.15, Title 14, CCR.

Five alternatives that would authorize boat limits aboard CPFVs are being provided for Fish and Game Commission (Commission) consideration. These alternatives either authorize the operator(s) and crew members on a vessel to be included with the number of passengers authorized to fish when calculating boat bag limits for a fishing trip, or prohibit the operator(s) and crew members from being included when

calculating boat limits. Also, these alternatives either allow or prohibit the operator(s) and crew members from catching and/or keeping fish during a trip towards achieving the boat limits or possessing fish at the end of a trip.

Other provisions are being considered under alternatives that would authorize boat limits as follows:

- An authorization to take and possess boat limits does not apply to fishing trips originating in California where fish are taken in another jurisdiction. This change is needed to assure that California's sport fishing regulations do not inadvertently in conflict with those of other jurisdictions, and that California's boat limits are applicable only to angling from vessels in the waters off California.
- For each trip, the number of passengers, operator(s), and crew members are required to be recorded separately on the vessel logbook under "number of fishers" and next to the vessel operators' signature, respectively. This change will help assure that enforcement staff can distinguish between the number of passengers and operator(s)/crew members for purposes of calculating the authorized boat limits aboard a vessel.
- Upon completion of a sport fishing trip, persons authorized to take fish on that trip may not possess more than the authorized daily limit taken under a boat limit. This change will ensure that enforcement staff can determine whether the daily bag limit provisions for each species and species group has been complied with by individuals at the completion of a fishing trip.
- A fishing trip is completed at the time a person disembarks from the vessel. This change will help ensure that passengers, crew, and enforcement staff clearly understand at what point the trip is technically completed and persons will be accountable for violations of individual daily bag limits.
- Species and species groups for which no bag and possession limit exists are not included in the boat limit. This change will ensure that operator(s), crew members, passengers, and Department staff understand that species for which no bag limits presently exist are not involved in the calculation of a boat limit.
- Where boat limits are provided for in Section 195, the vessel operator(s) and crew members may be cited for violations occurring aboard the vessel, including, but not limited to violations of overlimits, possession of prohibited species, minimum size limits, and fish taken out of season or in closed areas. This change will help further clarify in regulation that the vessel operators and crew members, who are the primary persons handling fish aboard their vessels, are also primarily responsible for ensuring compliance with sport fishing regulations aboard their vessel.

Also, changes proposed in existing regulations governing CPFV logbooks would add and clarify provisions regarding identification, completion, availability, inspection, and confidentiality of CPFV logbooks. The proposed regulation changes also clarify that fish may not be taken or possessed by CPFV passengers, or the vessel owner or operator in violation of sport fishing regulations including taking more than the authorized individual daily limits prescribed in regulation.

Minor editorial changes are also proposed to improve the clarity and consistency of the regulations.

Section 2.09 - Re: Possession of Illegal Gear

Current regulations prohibit the use or possession of any landing gear, nets, gaffs, or spears in or within 100 yards of any stream in Mendocino, Monterey, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, and Sonoma counties. Some anglers prefer to use landing type dip nets to assist in landing salmon or steelhead when fishing in rivers or streams. Landing nets often prevent injuries to fish that are being landed in rocky areas, or from a boat. The current regulations prohibit any landing gear or nets in or near streams in specified counties. The Department is proposing to expand the prohibition of any landing gear, nets, gaffs or spears to all inland waters statewide, including lakes and reservoirs, but allow the use or possession of standard landing type dip nets in inland waters, if dip nets do not exceed 36 inches in greatest dimension, excluding the handle.

In 2001, the regulation prohibiting the use of underwater viewing devices in the South Central District

was eliminated in the interest of regulation simplification. Since that time, Department enforcement personnel have identified instances of illegal use of underwater viewing devices and have requested the prohibition of underwater viewing devices used in inland waters for taking. A popular illegal method of taking salmon and steelhead incorporates a face mask or other underwater viewing device and a spear or large hook. Current regulations do not specifically prohibit the use or possession of underwater viewing devices for the purpose of taking fish. The Department is proposing to add underwater viewing devices to Section 2.09 that identifies illegal gear, except when legally spear fishing in waters authorized by Section 2.30.

Section 2.10 - Fishing Methods Restrictions

Current regulations define the term “hook gap”, and restrict hook gap sizes and length of shanks on hooks that anglers may use in inland waters of the State. Existing regulations also restrict various methods of attaching hooks and certain weights. The current Section 2.10 inadvertently allows the use of some types of gear that are highly effective for illegally snagging salmon, while making illegal some traditional striped bass and sturgeon fishing gear. The Department is proposing to further simplify hook size and lure weight restrictions by establishing consistent regulations for the majority of waters throughout the State, while preventing the use or possession of some of the more blatant snagging gear.

Current regulations for rivers and streams restrict maximum hook sizes at 5/8 inch for single hooks and 1/2 inch for multiple hooks. This regulation inadvertently prevents the use of some traditional sturgeon and striped bass gear. Current regulations also allow the use of a 5/8 inch multiple hook on a manufactured lure exceeding 1/2 ounce. Multiple hooks with a gap greater than 5/8 on manufactured lures exceeding one ounce are considered to be highly effective gear for illegal snagging in rivers and streams. In addition, the current regulations prohibit the use of hooks greater than 1/2 inch on buoyant lures. Buoyant lures are not an effective snagging tool and are frequently used by salmon, steelhead, and striped bass anglers.

With the combined goals of simplifying angling regulations while continuing to protect the State’s fishery resources, the Department is proposing the following amendments to current regulations:

In all rivers and streams except the Sacramento-San Joaquin Delta, and the Colorado River, it is unlawful to:

1. use any multiple hook with a gap greater than 3/4 inch,
2. use any hook with a shank longer than 2 inches,
3. use any hook directly or indirectly attached closer than 18 inches to any weight exceeding 1/2 ounce,
4. use any multiple hook or more than one single hook on non-buoyant (sinking) lures exceeding one ounce,
5. attach any weight below a hook.

These amendments establish one maximum size for multiple hooks in all rivers and streams, and prohibit the use of some of the more effective snagging gear while allowing the use of traditional angling gear by the majority of sport anglers.

Section 5.00 - Definition of Sacramento-San Joaquin River Delta

Current regulations define the eastern boundary of the Sacramento-San Joaquin River Delta as all rivers, sloughs, canals, cuts, forebays, and flooded islands west of Highway 99. Current and proposed regulations also permit more liberal hook-size and gear restrictions in Delta waters than in rivers upstream of the Delta. In a separate recommendation, the Department is proposing to prohibit some of the types of gear permitted in the Delta from approximately 14 miles of the lower Mokelumne River, between Highway 99 and Interstate 5. The purpose of this restriction is to protect salmon and steelhead in more vulnerable confined river habitats from the type of gear that is effective for catching striped bass and sturgeon in

larger and more expansive waters. Some of this gear has been used in the past by poachers to illegally snag salmon and steelhead in the lower Mokelumne River where fishery managers are attempting to restore those populations. Readjusting the western boundary of the Delta as defined in Section 5.00, and referencing the Delta definition in other sections, will increase protection of salmon and steelhead while continuing to maintain Delta fishing opportunities.

Section 5.00 and Subsection (b)(195.5) of Section 7.50 - Trout Lake (Siskiyou County)

Trout Lake is located within the Shasta Valley Wildlife Area (SVWA) in Siskiyou County. Current special fishing regulations provide for trout and black bass angling only on Wednesdays and weekends from April 1 through September 30. Department wildlife personnel at SVWA have determined that early season angling activity at Trout Lake is significantly impacting waterfowl nesting success. Department personnel have documented Canada geese permanently abandoning their nests at multiple locations on Trout Lake. In early to mid April during the 2002 angling season at Trout Lake, DFG personnel documented Canada goose nesting failures at twenty-three (23) of thirty (30) nesting platforms for a nesting failure rate of just over 75%. The primary reason for these nest failures was determined to be abandonment of the nest by adults that were driven off the nests by angler activity on Trout Lake. Goose nesting activities typically continue through the third week of April at Trout Lake.

The proposed regulation change would delay the special trout and black bass angling season opening date from April 1 to the last Saturday in April. This recommended change will eliminate human interference with goose and duck nesting activities on Trout Lake and substantially improve waterfowl production on the lake.

Section 5.00 - Diamond Valley Lake and Perris Lake Black Bass Regulations

Current statewide general regulations for black bass provide for a daily bag of five fish with a minimum size limit of 12 inches in total length, unless otherwise specified in special regulations. Diamond Valley Lake is currently managed according to general black bass regulations. The Department is proposing to impose a 15-inch minimum size limit and a five-fish daily bag limit for largemouth bass at Diamond Valley Lake. In addition, this proposal recommends that smallmouth bass have a zero (0) bag limit at Diamond Valley Lake.

Lake Perris is currently regulated under special black bass regulations that restrict the minimum size to 15 inches and the daily bag limit to two fish. The Department is proposing to remove the special black bass regulations and manage Lake Perris under the statewide general regulations for black bass where the minimum size limit is 12 inches total length and the daily bag limit is 5 fish.

Section 5.50 - Mountain Whitefish Bag Limit

The current regulations identify mountain whitefish, establish the open season, and set the bag limit at fifteen. The Department proposes to amend current regulations by reducing the bag limit for mountain whitefish from fifteen to five.

The mountain whitefish is a native salmonid game fish found in the Truckee, Carson and Walker River drainages of the eastern Sierra. Based on fishery surveys conducted by the Department and by experts in the academic community, the abundance and distribution of mountain whitefish is clearly diminished from historic levels. In the nineteenth and early twentieth centuries mountain whitefish were so abundant that commercial fisheries for them existed. Remaining whitefish populations have been fragmented by dam building and other habitat alterations. The existing mountain whitefish bag limit of 15 was established decades ago when bag limits for trout and other game fish species were higher than present. Conservation of this native species is now more of concern for fisheries managers than in the past.

The Department believes a more conservation-oriented fishery management approach is warranted that will reduce any potential impact that angling harvest may have on mountain whitefish populations. Also,

because mountain whitefish is generally targeted by trout anglers in traditional trout waters, reducing the daily bag limit to five fish will make the whitefish bag limit consistent with general trout bag limits, thus simplifying angling regulations.

Section 5.75 - Striped Bass at Lake Elsinore, Riverside County

The proposed regulation change will enable the Department to use striped bass as a means of controlling carp and threadfin shad populations in Lake Elsinore, Riverside County. The existing regulations Section 5.75, Title 14 CCR, places bag and size limits on striped bass caught in California. The statewide general regulation is a bag limit of 2 and a minimum size of 18 inches, except in the Colorado River District, the Southern District and New Hogan, San Antonio and Santa Margarita lakes in which the bag limit is 10 and there is no minimum size limit. In an effort to insure the striped bass are effective at controlling the shad and carp we are proposing to restrict the harvest of striped bass in Lake Elsinore.

The existing regulation would be modified for the more restrictive general regulations to be applied at Lake Elsinore in the Southern District. The harvest of striped bass in Lake Elsinore would be limited to existing statewide regulation of a two-fish bag limit and a minimum total length of 18 inches.

Sections 7.00 and 7.50 - Open Fishing Season in Inyo County

Under the current general regulation for lakes and streams in Inyo County (subsection (b)(3) of Section 7.00, and numerous subsections of Section 7.50), the open fishing season is from the last Saturday in April through October 31. The Department is recommending that the Commission extend the open season specified in these regulations to include the first two weeks in November. The change will bring the Inyo County trout season into conformity with that of neighboring Mono County and for most other Sierra District streams, which currently have open fishing seasons from the last Saturday in April through November 15.

The Department's recommendation is based on a request made by the Inyo-Mono Fish and Game Advisory Commission, that the open season for all Inyo County lakes be extended to include all of November. The request was based on their desire to promote the county's tourism-oriented economy.

The Department believes that extending the fishing season from October 31 to November 15, in certain waters of Inyo County has the potential to both increase angling opportunity and benefit the local economy, with no detrimental effects on the fisheries.

Sections 7.00 and 7.50 - Steelhead Season in the South Central District

Current angling regulations in the South Central Fishing District provide for steelhead fishing during November 15 through February 28 but only on Saturdays, Sundays, Wednesdays, legal holidays and opening and closing days. Creel and angler survey data indicate that few adult steelhead (greater than 16 inches in length) are caught before December 1. Nearly all of the fish caught prior to December 1 are juvenile steelhead less than 11 inches in length. In order to prevent juvenile steelhead angling mortality during November, and to readjust the winter steelhead season to better coincide with adult steelhead migration timing, the Department is proposing that the opening of the winter steelhead season in the South Central District be delayed until December 1. In order to maintain fishing opportunities, the Department is also proposing to extend the end of the steelhead season from February 28 to March 7.

In addition, this proposal corrects some errors and/or clarifies descriptions of stream sections noted in the List of Waters with Special Fishing Regulations for trout and salmon. These waters include: Aptos Creek (Santa Cruz Co.), Arroyo Seco River (Monterey Co.), Big Sur River (Monterey Co.), Nacimiento River (Monterey & San Luis Obispo Counties), Pescadero Ck. and tributaries (San Mateo & Santa Cruz Co.), Salinas River and tributaries (Monterey and San Luis Obispo Counties), San Gregorio Ck. (San Mateo Co.), and Waddell Creek (Santa Cruz Co.).

Section 7.50 - San Joaquin, Stanislaus, Tuolumne, and Merced Rivers

1. Salmon season extension:

Current regulations on the San Joaquin River from the Highway 140 bridge downstream to the Highway 132 bridge, on the Merced River from Schaffer bridge on Montpelier Road downstream to the mouth, on the Tuolumne River from the Hickman bridge to the mouth, and on the Stanislaus River from the Highway 120 bridge in Oakdale to the mouth provide for a daily bag limit of one salmon from January 1 through October 15. The salmon limit is zero from October 16 through December 31. Because salmon populations have improved significantly during the past ten years, the Department is recommending a slight increase in the number of salmon allowed to be harvested in the San Joaquin, Merced, Tuolumne and Stanislaus rivers. This proposal recommends extending the period when one salmon per day may be taken for an additional two weeks from October 15 to October 31 in those river reaches identified above.

2. Regulation clarification

Current regulations identify a section of the Middle Fork Stanislaus River from the U.S. Forest Service footbridge at Spring Gap at New Melones Reservoir including Sand Bar Forebay as having a daily bag limit of two trout instead of the general district regulation of five trout per day. The purpose of the reduced bag limit is to prevent excessive harvest of a self-sustaining trout population in this reach of the Middle Fork Stanislaus River. Sand Bar Forebay is about a 10 surface-acre body of water that is formed by a diversion canal off of the Middle Fork Stanislaus River. Since Sand Bar Forebay is not directly connected to the main stem Middle Fork Stanislaus River, anglers have been confused as to whether the general daily bag limit regulations apply or the reduced bag limit identified in the special fishing regulation subsection 187(C) are applicable to this body of water. As a result of this confusion, the local court (Sonora Court) dismisses all citations involving violations at the Sand Bar Forebay. The Department recommends omitting the reference to Sand Bar Forebay from subsection 7.50(187)(C). This recommendation would have no adverse effect on trout populations in the main stem Middle Fork Stanislaus River.

Section 7.50 - Upper Owens River Sport Fishing Restrictions

The upper Owens River (the portion of the Owens River upstream from Crowley Lake) is primarily divided into two separate management areas, with differing sport fishing restrictions, as follows:

- (i) The 21-mile-long portion of the upper Owens River from highway 395 downstream to the Benton Bridge road crossing: This reach of the upper Owens River is a Commission-designated Catch-and-Release Water, and is known as the “catch-and-release area”. Sport fishing regulations for this area allow fishing from the last Saturday in April through November 15 with a two-trout daily bag limit, and a maximum size limit of 16 inches total length. Special fishing methods restrictions for this area allow anglers to use only artificial lures with barbless hooks.
- (ii) The adjacent three miles of the upper Owens River, from Benton Road crossing downstream to the fishing monument, located approximately 1/4 mile upstream from Crowley Lake: This area is stocked regularly with catchable trout and managed as a put-and-take fishery. Sport fishing regulations for this area allow fishing from the Saturday preceding Memorial Day through September 30 with a five-trout daily bag limit, no size limit, and no special fishing methods restrictions.

The Owens River, for many years, has sustained one of the most popular and famous trout fisheries in the State. It is extremely important to the many and diverse recreational anglers who travel to Mono County to fish the Owens River, the only river system in the Eastern Sierra, and as such, it is critically important to the well-being of the tourism-based Mono County economy. To address the diverse needs and preferences of the angling public who use this area, the Department has intensively studied and managed the fisheries of Owens River drainage. Regulations developed by the Department are intended

to provide the greatest opportunity for the greatest number of diverse constituents using the river based on sound biological findings from those studies. The Department believes the current regulation on the upper Owens River from Benton Bridge road crossing downstream to the fishing monument is unjustified and too restrictive. The Department recommends that in this area the open fishing season would be from the last Saturday in April through November 15, with a five-trout daily bag limit, no size limit, and no special fishing methods restrictions.

Section 7.50 - Smith River Special Angling Regulations

The current angling regulations for the Smith River have caused some confusion to anglers because of how the stream reaches are organized in the regulatory language. The current regulation divides the Smith River basin into upper and lower drainage sections rather than the customary sub-basin or tributary method. All other streams in the special fishing regulation section (7.50) list angling regulations in stream reaches oriented from downstream to upstream. The proposed regulation reorganizes the order presentation of the various stream sections from downstream to upstream without changing any seasons or bag limits. This change will make the regulatory language more consistent, therefore, easier to understand by the angling public.

Section 7.50 - South Central Sport Fishing District Regulations, Adding Steelhead Waters

Current regulations in known steelhead waters of the South Central Sport Fishing District are directed at providing catch-and-release angling opportunities for adult steelhead during December through February. Trout fishing during the summer general trout season in steelhead streams is prohibited. Recent information has identified five additional streams in the South Central Sport Fishing District as possible steelhead streams that are currently not regulated under steelhead angling regulations. These streams are currently regulated under the general trout season which allows for the harvest of 5-trout per day. To prevent unnecessary mortality on ESA-listed juvenile steelhead and to cooperate with NOAA-Fisheries in the protection and recovery of threatened steelhead, the Department is proposing a regulation change to prohibit summer trout fishing and allow no-harvest angling during the winter steelhead season from December 1 through March 7 in the following five streams: 1) Codornices Creek (Alameda Co.), 2) Coyote Creek downstream from Upper Penitencia Creek (Santa Clara Co.), 3) Upper Penitencia Creek (Santa Clara Co.), 4) Pinole Creek (Contra Costa Co.) and 5) Stevens Creek downstream of Stevens Reservoir (Santa Clara Co.). During this period fishing would be allowed only on Saturdays, Sundays, Wednesdays, legal holidays and opening and closing days. Only barbless hooks could be used. This proposed change will make regulations in the above streams consistent with other steelhead streams in the South Central Sport Fishing District.

Section 7.50 - Feather River Salmon and Steelhead

Sacramento River system spring-run Chinook salmon are listed as threatened under both State and federal endangered species acts. Although the population has remained stable in recent years, the spring-run Chinook population remains below levels defined for recovery of the run.

Current regulations in the Feather River allow angling for spring-run Chinook salmon, and based on recent angler survey results, approximately 2,000 spring Chinook are harvested in the Feather River by anglers during the period April through June. During January 1 through September 30, up to 3 salmon per day are allowed to be harvested from the Highway 70 Bridge to the mouth of Honcut Creek, and 2 salmon per day from the mouth of Honcut Creek to the Feather River mouth.

The Department is concerned that the present harvest level of spring-run Chinook salmon in the Feather River is too great to effect recovery for this threatened species. This concern is supported by the inability of Feather River Hatchery to meet its egg production goal of 7 million eggs because of insufficient numbers of spawners. Last year, the spring-run Chinook egg-take was 2.3 million eggs, only 33 percent of the goal.

To accomplish reduced harvest of spring-run Chinook salmon in the Feather River, the Department is recommending the closure of some areas to fishing and reducing the bag limit during the period when spring-run Chinook are most vulnerable to angling. These changes include: (a) prohibit angling from the Table Mountain bicycle bridge to the Highway 70 Bridge during March 1 through December 31, and (b) from the Highway 70 Bridge to the Feather River mouth, reduce the salmon bag limit to 0 during March 1 through July 31. Under the proposed regulations, anglers will still have the opportunity to catch and retain 3 Chinook salmon during the peak fishing months of August and September.

This proposal also includes simplifying the regulations by eliminating one river reach defined in the current regulations and establishing a boundary between the lower and middle river sections at the Highway 20 bridge instead of Honcut Creek. This reduces the length of the lower reach by approximately 10 miles, however, the proposed bag limit is increased from 2 to 3 salmon, for consistency with the other sections.

The Department is also proposing to increase the bag limit of steelhead from 1 to 2 hatchery trout or hatchery steelhead. There is a surplus of hatchery-steelhead spawners that should be made available for angler harvest.

Section 7.50 - Silver King Creek

Current regulations prohibit fishing in Silver King Creek and tributaries, including lakes, above Llewellyn Falls all year. The current regulation was designed to protect the native Paiute cutthroat trout, which are listed as threatened pursuant to the federal Endangered Species Act, in a portion of its existing range above Llewellyn Falls. Current regulations for Silver King Creek and tributaries downstream of Llewellyn Falls provide for trout fishing from the last Saturday in April through November 15, with a five-fish daily bag limit and ten-fish possession limit. Angling is permitted downstream of Llewellyn Falls where nonnative trout exist and compete with native Paiute cutthroat trout.

The Department is proposing to implement a Paiute cutthroat trout restoration project in Silver King Creek downstream of Llewellyn Falls, and is recommending the closure of the restoration area to fishing. In addition, the Department is proposing to open 1½ miles of the currently closed reach of Silver King Creek upstream of Llewellyn Falls to zero limit, catch-and-release angling during July 1 through September 30 to provide continued fishing opportunities within the Silver King Creek drainage. Other existing portions of the watershed currently closed to angling would remain closed.

Section 8.00 - North Coast Low Flow Restrictions

During the period from October 1 through January 31, current regulations allow the Department to close stream reaches to fishing within the Eel River, Mad River, Mattole River, Redwood Creek, Smith River, and Van Duzen river systems when the stream flows at designated USGS gauging stations fall below the minimum flow set forth in regulations. Current regulations require that on Monday, for the period of Tuesday through Thursday, and on Thursday, for the period of Friday through Monday, stream flows are evaluated to determine if a stream should be open or closed to fishing. This regulation was enacted to reduce the vulnerability of adult Chinook and coho salmon and adult steelhead trout to excessive fishing activity during fall and winter low-flow periods. Because rapidly changing stream flow conditions can affect the vulnerability of migrating salmon and steelhead to angling, the Department is proposing to evaluate stream flows an additional day each week. Stream flows would be evaluated to determine if a stream reach should be open or closed to fishing on Monday, for the period of Tuesday and Wednesday; on Wednesday, for the period of Thursday and Friday; and on Friday, for the period of Saturday through Monday.

In addition, current regulations require fishing closure of a river reach if flows are less than the designated minimum flow on the scheduled flow-determination day and time. Current regulations also allow the Department to reopen a stream during the period of closure if the designated minimum flow is exceeded and the Department is reasonably assured that stream flows will increase above the designated minimum

flow before the next flow determination day. However, current regulations do not allow the Department to close a stream if the Department is reasonably assured that flows will fall below designated minimum flows before the next flow-determination day. To provide additional protection for adult Chinook and coho salmon and adult steelhead during periods of low stream flows, the Department is proposing regulations that allow the closing of a stream if minimum stream flows are expected to occur before the next stream-flow-determination day.

Current Mad River low-flow regulations identify the County Road Bridge at Maple Creek as the upper boundary that would be closed to fishing during periods of low stream flow, while angling regulations identify the upper boundary eight miles farther upstream at the confluence of Cowan Creek. Hence, during potential low flow angling closures from October 1 through January 31, the Mad River from near its mouth upstream to the County Road Bridge at Maple Creek could be closed to angling while the 8-mile river reach from the County Road Bridge at Maple Creek upstream to Cowan Creek remains open to fishing. The Department recommends extending the Mad River low-flow section from the County Road Bridge at Maple Creek upstream to the confluence of Cowan Creek to coincide with the section of stream defined in the special fishing regulations.

Section 8.00 - Low-flow Restrictions for South Central Coast Streams

Current regulations require the Department to close the main stem Carmel River to fishing when stream flows are less than 135 cubic-feet-per-second (cfs). Low-flow closures are generally put in place to avoid excessive and repetitive catch-and-release angling pressure on steelhead that may be trapped in individual pools because stream flows are inadequate to allow them free passage upstream. Low-flow conditions generally occur during years of below normal rainfall.

In order to avoid excessive angler contact of steelhead during low stream flow conditions in the Carmel River and other anadromous streams of the South Central Sport Fishing District, the Department is proposing the following low-flow fishing closures:

1. Carmel River, reduce the low-flow closure trigger from 135 cfs to 80 cfs. The low-flow closure on the Carmel River will be applied to four adjacent creeks, San Jose, Gibson, Malpaso, Soberanes.
2. Big Sur River, a 40 cfs low-flow closure. Low flow closures on the Big Sur River would also apply to all other coastal streams of the Big Sur coast in Monterey County from Granite Creek south to Salmon Creek.
3. Pajaro River and all its tributaries (between 40 to 150 cfs).
4. Salinas River, lower main stem below its confluence with the Arroyo Seco River (between 40 to 250 cfs).
5. Arroyo Seco River based on both the USGS Arroyo Seco gauge near Greenfield (between 40 to 150 cfs) and at the Spreckels gauge in Monterey County (between 40 to 250 cfs).
6. Aptos and Soquel creeks (between 8 to 50 cfs) based on the USGS Soquel Creek gauge in Santa Cruz County.
7. San Lorenzo River and adjacent streams north to Waddell Creek in Santa Cruz County (between 40 to 140 cfs).
8. Pescadero Creek (between 8 to 50 cfs) and San Mateo County coastal streams from Elliot Creek to Milagro Creek.
9. Coyote Creek downstream of its confluence with Upper Penitencia Creek, and Upper Penitencia Creek (20 to 40 cfs).

Section 43 - Captive Propagation and Commercialization of Native Reptiles

Current regulations authorize the Department to issue permits for captive propagation of the following three native snakes for commercial purposes: common king snake (*Lampropeltis getulus*), gopher snake (*Pituophis melanoleucus*), and rosy boa (*Lichanura trivirgata*). No other native reptiles or amphibians are allowed for commercial purposes. Amphibians and reptiles not native to California are allowed for commercialization, unless specifically prohibited in Section 671, Title 14 (Restricted Species).

In previous Commission meetings, the Department recommended that the Commission consider removing amphibians from the title and body of Section 43, Title 14, so that the regulation applies only to reptiles. No amphibians are currently authorized for use under this section. On February 6, 2003, the Commission adopted a policy, drafted by the Department, that provides guidelines for addressing requests to add or remove species from the list of species authorized for capture and propagation for commercial purposes. The Department is proposing a regulation change that supports the Commission's decision to remove amphibians from Section 43 and adds a provision for adding or removing animals from the authorized list for capture and commercial propagation.

Current regulations lack a provision for a proponent to request the addition or removal of a species from the existing list of species (Section 43) allowed for commercial propagation and sale. The Department's proposed amendments to Section 43 charge the proponent that requests modifications of the list of species that can be commercially bred and sold, with the responsibility to provide certain specific information necessary for the Department, and ultimately the Commission, to evaluate the proposed action. The information to be required of a proponent is necessary under the Certified Regulatory Program for Adoption of Regulations (Section 777.8, Title 14). The Department recommends that a proponent of such a change should be required to provide whatever information is available about the population status of the reptile, captive care guidelines, an evaluation of the pet market for the reptile, an evaluation of the effects to the environment of released or escaped pets, and an evaluation of the effects of broodstock collection methods on wild populations. The Department will forward a recommendation to the Commission based on reviews of the proponent's information by Department staff and by independent professional herpetologists outside of the Department.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the City Council Chambers, City Hall, 777 Cypress Avenue, Redding, CA, on October 3, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard. Written comments may also be submitted to the Fish and Game Commission office at the address given below.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, CA, on November 7, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments may be submitted on or before Friday, October 31, 2003 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than Friday, November 7, 2003 at the hearing in San Diego. All correspondence, including E-mail, must include the true name and mailing address of the commenter.

NOTICE IS FURTHER GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA, on December 5, 2003, at 8:30 a.m., to consider adoption of the proposed Sport Fishing Regulations for the 2004 and 2005 seasons. Additional testimony on the proposed regulations may be received if substantive changes result from the November 7, 2003, meeting or if regulatory alternatives are under consideration.

Draft environmental documents associated with the proposed regulatory actions are made available for comment commencing September 10, 2003. Oral or written comments relevant to these documents will be received at the October 3, 2003, meeting in Redding. Written comments on these documents may be submitted to the Commission office (address given herein) until 5:00 p.m., October 27, 2003. Draft

environmental documents are available for review at the Commission office and at the Department of Fish and Game's headquarters office (same address as Commission). Copies of the documents are also available for review at the Department offices in Redding, Rancho Cordova, Yountville, Fresno, Bishop, Eureka, Menlo Park, Monterey, Chino and San Diego. NO WRITTEN COMMENTS ON THE DRAFT ENVIRONMENTAL DOCUMENTS WILL BE ACCEPTED AFTER 5:00 P.M. ON OCTOBER 27, 2003. The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Jon Snellstrom at the preceding phone number. Jim Hopelain, (916) 445-3597, (Inland) Fisheries Program Branch, and Don Schultze (916) 651-7670, (Ocean Fishing) Marine Region have been designated to respond to questions on the substance of the proposed regulations. Copies of the initial statement of reason, including the regulatory language, may be obtained from the above address. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

Sections 1.17, 1.59, 27.60, and 195, Re: Boat Bag Limits, Commercial Passenger Fishing Vessel Logbooks

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The reason for this is that the action is expected to have a generally positive effect on sport fishing by authorizing anglers aboard vessels the opportunity to take boat limits. Boat limits should assist some anglers in taking home fish from a fishing trip on the ocean.

Section 2.09 Re: Possession of Illegal Gear; Section 2.10 Re: Fishing Methods Restrictions; Subsection (a)(1) of Section 5.00 Re: Definition of Sacramento-San Joaquin River Delta; Subsection (b) of Section 5.00 Re: Diamond Valley Lake and Perris Lake Black Bass Regulations; Subsections (b)(118)(B), (b)(168.5)(B), (b)(168.5)(C), (b)(186)(B), (b)(187)(C) and (b)(198)(D) of Section 7.50 Re: San Joaquin, Stanislaus, Tuolumne, and

Merced Rivers; Subsection (b)(134)(B) of Section 7.50, Re: Upper Owens River Sport Fishing Restrictions; Subsection (b)(180) of Section 7.50 Re: Smith River special angling regulations; Subsections (b)(42.3), (b)(50.8), (b)(135.8), (b)(139.7) and (b)(187.5) to Section 7.50 Re: South Central Sport Fishing District Regulations, adding additional steelhead waters to the Alphabetical List of Waters with Special Fishing Regulations; Subsection (b)(68) of Section 7.50, Re: Feather River Salmon and Steelhead; Subsections (a) and (a)(4) of Section 8.00 Re: North Coast Low Flow Restrictions; and Subsection (c) of Section 8.00, Re: Low-flow Restrictions for South Central Coast Streams

Proposed actions will not have significant statewide adverse economic impacts directly affecting business, including the ability of California businesses to compete with businesses in other states.

Subsection (b)(33) of Section 5.00 and Subsection (b)(195.5) of Section 7.50 Re: Trout Lake (Siskiyou County)

The proposed action will not have a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states. The preservation of Canada geese and other waterfowl is not only the primary stated goal of the Shasta Valley Wildlife Area but is beneficial to nature lovers, birdwatchers, waterfowl hunters and local businesses which provide goods and services related to these recreational activities. The proposed changes are necessary for the continued preservation of waterfowl, particularly Canada geese, and other wildlife values and therefore the prevention of adverse economic impacts locally.

Subsection (b) of Section 5.50 Re: Mountain Whitefish Bag Limit

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The regulations proposed apply to a fish which is found in only three river drainages in the eastern Sierra. Although the reduced bag limits are important to the management of whitefish, relatively few anglers will be affected.

Subsection (d)(1) of Section 5.75 Re: Striped Bass at Lake Elsinore, Riverside County

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The management of striped bass will not adversely affect any businesses because this is a new stocking effort. If striped bass do become established this will provide a fishing opportunity which currently does not exist.

Subsections (b)(2) through (b)(9) of Section 7.00, and Subsections (b)(48), (b)(49), (b)(58), (b)(73.5), (b)(82), and (b)(104.3) of Section 7.50, Re: Open Fishing Season in Inyo County

The proposed action will not have a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed change is expected to promote the economies of Mono County; therefore, no adverse economic impact is anticipated as a result of the change.

Subsection (e)(2) of Section 7.00, and Subsections (b)(8), (b)(12), (b)(23), (b)(29)(B), (b)(37), (b)(40), (b)(45), (b)(99), (b)(104)(A), (b)(128), (b)(135), (b)(136), (b)(137), (b)(158)(A), (b)(168), (b)(169), (b)(170), (b)(171), (b)(173), (b)(183), (b)(201)(B), (b)(203.5) and (b)(206) of Section 7.50 Re: Steelhead Season in the South Central District

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in

other states. The regulation change proposal delays the season by two weeks, but adds one week at the end of the season when the angling is likely to be better than at the beginning of the season. This is expected to result in roughly as much angling effort as currently occurs, so should not result in a net change in angler related expenditures.

Subsection (b)(178) of Section 7.50, Re: Silver King Creek

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The regulations proposed affect a short stream reach in a remote wilderness area of northern California.

Re: Section 43 - Captive Propagation and Commercialization of Native Retiles

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The changes are primarily for clarification, and they will have no substantial influence on human activities.

Re: All Proposed Changes.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:
The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John M. Duffy
Assistant Executive Director

Dated: August 6, 2003